



APPEAL TO THE BOARD OF ADJUSTMENT

Petition Date: September 3, 2015

Owner/Applicant: Donna & Dave Thackrey

Requested Action: A 0.5-foot variance from the required rear yard setback of 18 feet for the existing deck (Section 405.1900.2.a); and

A 13-foot variance from the required rear yard setback of 30 feet for the proposed pergola (Section 405.1900.2); and

A 0.5-foot variance from the required side yard setback of 5 feet for the proposed pergola (Section 405.1900.3).

Location of Site: 445 Oakley Drive (Locator # 19J410693)

Subdivision: Wydown Forest

Size of Property: 5,377 square feet

Zoning District: R-2 Single Family Dwelling District

Prepared By: Louis Clayton, Planner

Date: August 24, 2015

Plans are available for review during business hours in the Department of Planning and Development Services.

Louis Clayton
Planner/Staff Liaison

Exhibits:

- A. Code of Ordinances for the City of Clayton & Clayton Master Plan
- B. Zoning Review Application and Denial Letter from Louis Clayton, Planner
- C. Appeal to the Board of Adjustment
- D. Drawings submitted by Applicant including a property survey, site plan, and elevations
- E. Staff Report

STAFF REPORT

BACKGROUND:

EXISTING CONDITIONS:

The 5,377-square-foot property is located at the southwest corner of Oakley and Edgewood Drives. The shape of the lot is irregular, representing a fan-like shape. The property narrows considerably from the front yard to the rear, and slopes from front to back. The property has a zoning designation of R-2 Single Family Dwelling District and the surrounding properties contain single-family residences. The property currently contains a 2,110-square-foot single-family residence.

A shared driveway runs along the northern (side) property line and leads to a tuck-under garage. A non-conforming +/- 230-square-foot wood deck is located at the rear of the home and encroaches 0.5 feet into the 18-foot rear yard setback for decks (decks may only encroach 12 feet into the required 30-foot rear yard setback for the principal structure). A building permit was issued for the deck in February, 2015; however, it was issued in error and the deck encroaches into the required rear yard setback. The following map shows the subject property and adjacent properties:



PROJECT DESCRIPTION AND VARIANCE REQUEST:

On August 25, 2014, Dave Thackrey, owner, submitted an application for Zoning Review and plans for the construction of a pergola to be attached to the rear of the home on top of the existing non-conforming deck. The pergola will be constructed of cedar to match the deck, and will stand

8.5 feet tall above the deck floor. The pergola roof will extend 6 inches beyond the footprint of the deck on all sides.

On July 31, 2015, staff completed an initial review of the plans and prepared a Zoning Review Denial Letter addressed to the applicant indicating that the rear deck encroaches 0.5 feet into the 18-foot rear yard setback for decks (decks may only encroach 12 feet into the required 30-foot rear yard setback for the principal structure). The proposed pergola located on top of the deck will encroach 13 feet into the required rear yard setback of 30 feet, and 0.5 feet into the required side yard setback of 5 feet. Because the pergola will be attached to the home and is considered “covered” unlike decks, it may not encroach into any required setback.

The applicant is requesting the following variances:

1. A 0.5-foot variance from the required rear yard setback of 18 feet for the existing deck (Section 405.1900.2.a); and
2. A 13-foot variance from the required rear yard setback of 30 feet for the proposed pergola (Section 405.1900.2); and
3. A 0.5-foot variance from the required side yard setback of 5 feet for the proposed pergola (Section 405.1900.3).

The existing property owner of record, appellant and adjoining property owners have been advised of this variance request and the date and time of the hearing. Additionally, the property has been posted with a public hearing notice.

ANALYSIS:

Staff’s analysis is based on a preliminary assessment of elements of the applicable ordinances, information contained in the file, documents and observations made of the site and its environs. As part of this variance request, the applicant must demonstrate that an extreme hardship or severe practical difficulty exists based upon the shape of the lot, topography or other natural situation not the fault of the applicant. Therefore, in considering this appeal, the Board of Adjustment is authorized to grant a variance only upon findings that:

- a. There are practical difficulties or unnecessary hardships associated with the strict application of the Zoning Regulations, due to the exceptional or unique circumstances or conditions such that strict application would deprive the owner of reasonable use of the property.**

APPLICANT RESPONSE: The topography and pie shape of the lot deprives us of reasonable use of our lot.

STAFF OBSERVATIONS: The shape of the lot is irregular, representing a fan-like shape. The property narrows considerably from the front yard to the rear, and slopes from front to back. The existing deck was built in accordance with an approved building permit; however, is non-conforming and encroaches 0.5 feet into the 18-foot rear yard setback for decks (decks may only encroach 12 feet into the required 30-foot rear yard setback for the principal structure). Because the pergola will be attached to the home and is considered “covered” unlike decks, it may not encroach into any required setback. Given the irregular shape of the lot and the existing placement of the home and deck, construction of a reasonably sized pergola on this site in conformance with the setback requirements would be difficult as compared to other regularly shaped lots.

- b. **Granting the variance requested would observe the spirit of the Zoning Regulations and secure public safety and welfare.**

APPLICANT RESPONSE: We would still have a reasonable setback.

STAFF OBSERVATIONS: The Zoning Regulations establish setbacks to maintain an appropriate amount of light and air amongst structures and to ensure compatible development of properties within the district in which they are zoned. Pergola structures provide open air and light but are subject to the same setback requirements as structures with solid roof coverings. Staff does not anticipate any significant detrimental effects on public safety and welfare associated with approving the requested variances.

- c. **The deviation from strict application of the Zoning Regulations authorized by the variance would not constitute a change in the district map, impair an adequate supply of light and air to adjacent property, increase congestion in public streets, increase the danger of fire, materially diminish or impair established property values within the surrounding area and would not in any other respect impair the public health, safety, comfort, morals and welfare of the City of Clayton.**

APPLICANT RESPONSE: It would have only minor effect on others and would allow us full use of our lot.

STAFF OBSERVATIONS: In this case, deviation from the strict application of the Zoning Regulations would allow for a buildable area for a deck and pergola comparable to other nearby lots. It would not be anticipated that the deck and pergola would be a detriment to surrounding properties or create a public safety concern. For these reasons, granting the variances would not likely impair an adequate supply of light and air or negatively impact adjacent property.

ALTERNATIVES:

The applicant has listed two alternatives:

Alternative	Reason for not pursuing
To follow new set back measurement we would have a deck that is only a few feet.	The deck was built under good faith with an approved building permit.
We could put up an awning system.	This would be more intrusive to other lots.

STAFF OBSERVATIONS: Staff concurs with the applicant's assessment of possible alternatives.

BOARD ACTION:

The Board of Adjustment should consider all testimony and relevant facts to render its decision. The Board should articulate its findings of fact based on the criteria for consideration of variances into the record in support of its decision. After hearing the testimony and all relevant facts, the Board of Adjustment may, at its discretion:

1. Approve the appeal as presented or approve with specific conditions.

2. Table this item for further review.
3. Deny the appeal as presented.